REMARKS

In response to the Office Action of March 12, 2007, claims 1-4, 6, 8, and 14-15 are amended. Claims 1-4, 6, 8, and 14-15 were rejected under 35 U.S.C. § 102(b) as being anticipated by JP 403251518 (abstract) and under 35 U.S.C. § 103(a) as being unpatentable over JP 409278662 (abstract) in view of JP 403251518 (abstract) and over Naito *et al.*, U.S. Patent No. 4,201,776 in view of Jung *et al.*, U.S. Patent Pub. No. 2002/0146467. Each of the rejections is discussed below.

Rejection under 35 U.S.C. § 102(b)

The Examiner has rejected claims 1-4, 6, 8, and 14-15 under 35 U.S.C. § 102(b) as being anticipated by JP 403251518 (abstract). The Examiner reasons that this reference teaches that *Phyllostachys nigra* MUNRO var. *henonis* STAPF is extracted with ethanol (lower alcohol) and from this concludes that this reference anticipates the pending claims of the instant invention.

The Court of Appeals for the Federal Circuit has stated that anticipation requires the presence in a single prior art reference of each and every element of the claimed invention. *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1458 (Fed. Cir. 1984); *Alco Standard Corp. v. Tennessee Valley Auth.*, 1 USPQ2d 1337, 1341 (Fed. Cir. 1986). "There must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention." *Scripps Clinic v. Genentech Inc.*, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991) (citations omitted). "To anticipate a claim, a prior art reference must disclose every limitation of the claimed invention either expressly or inherently." Atlas Powder Co. v. Ireco Inc., 190 F.3d. 1342, 1346 (Fed. Cir. (1999) (quoting In re Schreiber, 128 F.3d 1473, 1477 (Fed. Cir. 1997)). As explained in detail below, Applicant believes that the claims as amended are not anticipated by the prior art relied upon by the Examiner.

The independent claims of the present invention, as amended, are drawn to methods for preventing and treating cardiovascular disease (claim 1), blood circulation diseases (claim 2) and inflammatory diseases (claim 3), said methods comprising administering to a subject in need thereof an effective amount of a bamboo extract. Support for the amendments to the claims can

be found throughout the Specification (see e.g., "Summary of the Invention," page 3, line 32 - page 4, line 12). JP 403251518, on the other hand, teaches a bamboo extract useful for preventing and treating dandruff and itch on the skin and scalp. As noted above, the extract purportedly inhibits or suppresses the multiplication of dandruff producing fungi. The extract is prepared by extracting pulverized bamboo with one or more organic solvents including the lower alcohols ethanol and methanol. This reference does not teach or suggest the use of any bamboo extract for the prevention and treatment of cardiovascular disease, blood circulation diseases or inflammatory diseases. As such, Applicant maintains that the claims as amended are not anticipated by the reference relied upon by the Examiner and therefore respectfully requests that this rejection be withdrawn.

Rejections under 35 U.S.C. § 103(a)

The Examiner bears the burden of establishing a prima facie case of obviousness. In determining obviousness, one must focus on Applicant's invention as a whole. *Symbol Technologies Inc. v. Opticon Inc.*, 19 USPQ2d 1241, 1246 (Fed. Cir. 1991). The primary inquiry is:

> whether the prior art would have suggested to one of ordinary skill in the art that this process should be carried out and would have had a reasonable likelihood of success. . . . Both the suggestion and the expectation of success must be found in the prior art, not in the applicant's disclosure.

In re Dow Chemical, 5 USPQ2d 1529, 1531 (Fed. Cir. 1988). Each of the rejections raised by the Examiner is discussed below in light of this standard.

The Examiner has rejected claims 1-4, 6, 8, and 14-15 under 35 U.S.C. § 103(a) as being unpatentable over JP 409278662 (the '662 patent) in view of JP 403251518 (the '518 patent). The Examiner reasons that the '662 patent teaches the extraction of *Phyllostachys nigra* MUNRO var. *henonis* STAPF with ether but not a lower alcohol, such as ethanol and the '518 patent teaches the extraction of *Phyllostachys nigra* MUNRO var. *henonis* STAPF with ethanol (lower alcohol). From this the Examiner concludes that it would have been obvious to extract bamboo with either ether or ethanol.

As noted above, the independent claims of the instant invention, as amended, are drawn to methods for preventing and treating cardiovascular disease, blood circulation diseases and inflammatory diseases. The '662 patent teaches a bamboo extract useful for preventing and treating allergic symptoms such as allergic rhinitis (pollenosis) or atopic dermatitis. The '518 patent teaches a bamboo extract useful for preventing and treating dandruff and itch on the skin and scalp. The extract purportedly inhibits or suppresses the multiplication of dandruff producing fungi. Thus, neither of the references cited by the Examiner teach or suggest that any of the compounds or extracts disclosed would be effective in the prevention or treatment of any of the diseases and conditions delineated in the claims of the instant invention. As such, Applicant maintains that the cited references, either alone or in combination, do not render the claims of the present invention as amended obvious. Reconsideration is respectfully requested.

The Examiner has rejected claims 1-4, 6, 8, and 14-15 under 35 U.S.C. § 103(a) as being unpatentable over Naito *et al.*, U.S. Patent No. 4,201,776 in view of Jung *et al.*, U.S. Patent Pub. No. 2002/0146467. The Examiner reasons that the Naito *et al.* teach the extraction of *Phyllostachys nigra* MUNRO var. *henonis* STAPF with water and Jung *et al.* teach the extraction of *Phyllostachys nigra* MUNRO var. *henonis* STAPF with water and ethanol (lower alcohol). From this the Examiner concludes that it would have been obvious to extract bamboo with either water or ethanol.

As noted above, the independent claims of the instant invention, as amended, are drawn to methods for preventing and treating cardiovascular disease, blood circulation diseases and inflammatory diseases. Naito *et al.* teach a bamboo extract for use as a food additive as a means for supplementing the amount of fiber in the diet. Jung *et al.* teach a bamboo extract useful for preventing and treating dementia. The extract is shown to inhibit the activity of the enzyme acetylcholine esterase (AChE), thereby increasing the level of the neurotransmitter acetylcholine. Thus, neither of the references cited by the Examiner taken either alone or in combination teach or suggest that any of the compounds or extracts disclosed would be effective in the prevention or treatment of any of the diseases and conditions delineated in the claims of the instant invention. As such, Applicant maintains that the cited references do not render the claims of the present invention as amended obvious. Reconsideration is respectfully requested.

If it would be helpful to obtain favorable consideration of this case, the Examiner is encouraged to call and discuss this case with the undersigned.

This constitutes a request for any needed extension of time and an authorization to charge all fees therefore to deposit account No. 19-5117, if not otherwise specifically requested. The undersigned hereby authorizes the charge of any fees created by the filing of this document or any deficiency of fees submitted herewith to be charged to deposit account No. 19-5117.

Respectfully submitted,

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